UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BILLY POTTS and BRIAN CLARKE, Plaintiffs,	COMPLAINT
POSTAL TRUCKING COMPANY, CLIFTON B. FINKLE, JR., Defendants, jointly and severally.	DOCKET NO. 17-cv-2386

Through their attorneys, plaintiffs bring this action pursuant to the Fair Labor Standards Act (FLSA) and New York Labor Law (NYLL) to recover inter alia withheld overtime and other financial remunerations from defendants and allege:

JURISDICTION & VENUE

1. This action arises under a federal statute, 29 U.S.C. § 216(b).
2. This Court has supplemental jurisdiction over the New York State claims pursuant to 28 U.S.C. § 1367.
3. The events and omissions giving rise to plaintiff's claims occurred in this judicial district.

THE PARTIES

4. Plaintiff Billy Potts ("Potts") is a Queens County resident and a current employee of defendants.
5. Plaintiff Brian Clarke ("Clarke") is a Kings County resident and a current employee of defendants.

6. Postal Trucking Company (“Postal”) is a business corporation organized under the laws of the State of New Jersey with trucking yards and trucking service routes throughout the five (5) Boroughs and Long Island, New York.

7. That the defendant Postal is a foreign corporation duly authorized to do business in the State of New York.

8. Defendant Clifton B. Finkle, Jr. is President of Postal Trucking Company.

STATEMENT OF CLAIMS

9. Between on or about February 2010 to the present time, defendants employed Potts to work at Postal as a lead driver, mechanic, lead dispatcher, working the company telephone on his off hours, and making service calls to the defendants’ truck yards throughout the five (5) Boroughs and Long Island, New York.

10. From on or about February 2011, to the present time, defendants employed Clarke to work at Postal as a lead driver, mechanic, lead dispatcher, working the company telephone on his off hours, and making service calls to the defendants’ truck yards throughout the five (5) boroughs and Long Island, New York.

11. Defendants have performed related activities through unified operations or common control since on or about February 2010, with the common purpose of running Postal, a for-profit trucking service company.

12. On information and belief, since on or about February 2010, defendants have constituted an enterprise engaged in commerce or in the production of goods for commerce, as defined by 29 U.S.C. § 203(s)(l), with a gross annual volume of sales made or business done of not less than $500,000. On information and belief, defendants' enterprise includes Postal. Defendants' enterprise has had employees engaged in commerce, or in the production of

goods for commerce, that handled, sold, or otherwise worked on goods and materials that had been moved in or produced for commerce and that use interstate wires and roadways to make truck deliveries or delivery orders over the phone, and that perform credit card transactions over interstate wires. When preparing deliveries and pickups at Postal, plaintiffs have regularly handled U.S. mail that had been moved in or out between states. Plaintiffs will likely have additional evidentiary support after they have a reasonable opportunity for further investigation and discovery concerning the income and finances of defendants' enterprise.

13. Throughout their employment by defendants, plaintiffs engaged in commerce or in the production of goods in commerce. In particular, plaintiffs handled and received goods moving in interstate commerce when making or receiving deliveries from Postal. Plaintiffs are likely to have additional evidentiary support after a reasonable opportunity for further investigation and discovery.

14. Plaintiffs are covered employees under the FLSA and are not exempt from the maximum hour requirements under 29 U.S.C. § 213. As employees of defendants, plaintiffs repaired and fixed trucks, drove trucks, hooked-up loads, dispatch drivers/deliveries and schedule job assignments.

15. Throughout plaintiffs' employment at Postal, plaintiffs worked for defendants in excess of forty hours each week for which defendants failed to pay them the appropriate overtime rate, for all hours worked, and without any statement or notice advising them of their regular or overtime rates.

16. Between on or about February 2010 to the present time, defendants failed to provide Potts with wage notices containing inter alia the hours and rates of overtime pay and basis

thereof, allowances, failed to reimburse for mileage and tolls, in violation of NYLL § 195(1).

17. Between on or about February 2011 to the present time, defendants failed to provide Clarke with wage notices containing inter alia the hours and rates of overtime pay and basis thereof, allowances, failed to reimburse for mileage and tolls, in violation of NYLL § 195(1).

18. Between on or about February 2010 to the present time, defendants failed to notify Potts in writing, or by public posting, of the employer's policy on sick leave, vacation, travel pay, personal leave, holidays, and overtime hours, in violation of NYLL § 195(5).

19. Between on or about February 2010 to the present time, defendants failed to notify Potts in writing, or by public posting, of the employer's policy on sick leave, vacation, travel pay, personal leave, holidays, and overtime hours, in violation of NYLL § 195(5).

20. Between on or about February 2010 to the present time, defendants failed to furnish wage statements to Potts with each payment of his wages, listing inter alia the dates and hours of overtime was worked, overtime rate of pay, gross wages, deductions, allowances, and net wages, in violation of NYLL § 195(3).

21. Between on or about February 2011 to the present time, defendants failed to furnish wage statements to Clarke with each payment of his wages, listing inter alia the dates and hours of overtime was worked, overtime rate of pay, gross wages, deductions, allowances, and net wages, in violation of NYLL § 195(3).

22. Between on or about February 2010 to the present, Potts worked for defendants at Postal in excess of forty hours each week, but defendants willfully failed to pay Potts at the

overtime rate required by the FLSA, 29 U.S.C. § 207, for the time in excess of forty hours that he worked each week.

23. Between on or about February 2011 to the present, Clarke worked for defendants at Postal in excess of forty hours each week, but defendants willfully failed to pay Clarke at the overtime rate required by the FLSA, 29 U.S.C. § 207, for the time in excess of forty hours that he worked each week.

24. Between on or about February 2010 to the present time, Potts worked over forty hours each week for defendants at Postal, and defendants willfully failed to pay Potts at the overtime rate required by NYLL, 12 NYCRR § 146-1.4, for the time in excess of forty hours that he worked each week.

25. Between on or about February 2011 to the present time, Clarke worked over forty hours each week for defendants at Postal, and defendants willfully failed to pay Clarke at the overtime rate required by NYLL, 12 NYCRR § 146-1.4, for the time in excess of forty hours that he worked each week.

26. Between on or about February 2010 to the present time, Potts worked shifts of ten or more hours each workday, but defendants willfully failed to pay him a spread-of-hours premium for those shifts, in violation of 12 NYCRR § 146-1.6.

27. Between on or about February 20101 to the present time, Clarke worked shifts of ten or more hours each workday, but defendants willfully failed to pay him a spread-of-hours premium for those shifts, in violation of 12 NYCRR § 146-1.6.

PRAYER FOR RELIEF

Plaintiffs requests that this Court grant them the relief to which they are entitled and:

a) enter judgment declaring that defendants willfully violated the FLSA;

b) enter judgment declaring that defendants willfully violated NYLL;

c) award plaintiffs the overtime wages they are owed under the FLSA and NYLL;

d) award plaintiffs the spread-of-hour premiums they are owed under NYLL;

e) award plaintiffs compensatory damages for defendants' violations of the FLSA and NYLL;

f) award plaintiffs liquidated or punitive damages pursuant to the FLSA;

g) award plaintiffs liquidated or punitive damages pursuant to NYLL;

h) award plaintiffs statutory damages for defendants' notice and record-keeping violations under NYLL;

i) enjoin defendants from retaliating against plaintiffs;

j) award plaintiffs attorneys' fees pursuant to 29 U.S.C. § 216, NYLL § 663, and all other applicable law;

k) award plaintiffs pre- and post-judgment interest as provided by law; and

l) grant such other relief that is just and proper.

New York, New York
April 21, 2017

Respectfully submitted,
BISCEGLIE & ASSOCIATES, P.C.
Attorneys for Plaintiffs

By:________________________

Angelo R. Bisceglie, Jr.
820 Second Avenue, 11th Floor
New York, New York 10017
angelo@bisceglieassociates.com
212-532-0002